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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)
31083.05US3

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Application Number
09/867,200

Filed
05/29/2001

First Named Inventor
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Art Unit
3627

Examiner
Cuff, Michael A.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

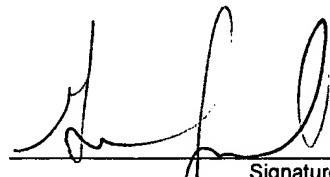
This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.
 assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)
 attorney or agent of record.
Registration number 35,906
 attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____



Signature

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May 23, 2006

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

*Total of _____ forms are submitted.

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REASONS FOR PRE-APPEAL REVIEW REQUEST

In the application claims 4-9 remain pending and presently stand rejected under 35 U.S.C. § 103 as being rendered obvious by the combination of Caveney (U.S. Patent No. 5,608,621) and Shipman (U.S. Patent No. 5,819,232). The reconsideration of the rejection of the claims is respectfully requested.

In rejecting the claims, it was acknowledged that Caveney fails to disclose the use of an inventory management system over a plurality of distribution points in a supply chain. It was asserted, however, that Shipman discloses that it is well known in the art to manage inventory over a plurality of distribution points, citing to Col. 2, lines 41-62. It was therefore concluded that it would have been obvious to modify Caveney with inventory management over a plurality of distribution points as taught by Shipman since tracking inventory at various points along the supply chain gives a better picture of actual inventory locations and allows administrators to better plan for inventory needs.

In response to this rejection of the claims, it is respectfully submitted that that a rejection under 35 U.S.C. § 103 requires, among other things, that a combination of references disclose, either expressly or inherently, each and every element set forth in the claims, considering the claims "as a whole."

As acknowledged in the rejection of the claims Caveney "fails to explicitly disclose the use of an inventory management system over a plurality of distribution points in the supply chain." (see Office Action on page 2). Thus, by generally failing to disclose, teach, or suggest using an inventory management system to manage items over a plurality of distribution points in the supply chain, it simply cannot be said that Caveney discloses, teaches, or suggests the specifically claimed using a critical stocking ratio "**to allocate** (i.e., *to apportion for a specific*

purpose or to particular persons or things (see Merriam-Webster Dictionary)) the total quantity of each of the plurality of items which can be held in inventory over the forecast period **among** (i.e., *in shares to each of* (see Merriam-Webster Dictionary)) the plurality of distribution points **in the supply chain...**”

While the Office Action has alleged that the Caveney “does use a critical stocking ratio for the forecast period ‘among the plurality of distribution points’” and “‘among the plurality of distribution point’ *means* ‘the total inventory’ which Caveney does allocate using a critical stocking ratio” (see Office Action on page 4), it is submitted that this alleged use of a critical stocking ration with “total inventory” still fails to “mean” that the critical stocking ratio is used “**to allocate** the total quantity of each of the plurality of items which can be held in inventory over the forecast period **among the plurality of distribution points in the supply chain...**” as is expressly set forth in the claims. That this alleged use of the critical stocking ration fails to “mean” that which is claimed is evidenced by that fact that Caveney never discloses, teaches, or suggests that anything is used to determine how *to allocate*, i.e., to apportion, items among plural distribution points in a supply chain as is claimed. Similarly, that this alleged use of the critical stocking ratio fails to “mean” that which is claimed is evidenced by that fact that the rejection of the claims itself never asserts that Caveney discloses, teaches, or suggests, that a critical stocking ratio is used *to allocate*, i.e., to apportion, items among plural distribution points in a supply chain as is claimed. Accordingly, since neither Caveney nor Shipman disclose this claimed element and since the rejection of the claims reflects that this aspect of the claimed invention is being impermissibly ignored, i.e., at least the combination of the word “allocate” and the words “among a plurality of distribution points in a supply chain” is not being considered, it is

respectfully submitted that the rejection of the claims fails to present a *prima facie* case of obviousness and must therefore be withdrawn.

It is further respectfully noted that, while the Advisory Action has ignored the argument that Caveney does not disclose using a critical stocking ratio *to allocate*, i.e., apportion, items within a supply chain and for at least this reason the claims should be deemed allowable, as concerns the claimed term “among” the Advisory Action incorrectly asserts that the “Applicant is not his own lexicographer” and that the definition of the word “among” to mean “in shares to each of” as provided by the Applicant cannot stand. In response, it is respectfully submitted that “an Applicant is entitled to be his or her own lexicographer and may rebut the presumption that claim terms are to be given their ordinary and customary meaning by clearly setting forth a definition of the term that is different from its ordinary and customary meaning.” *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994). Furthermore, “where an explicit definition is provided by the Applicant for a term, that definition will control interpretation of the term as it is used in the claims.” *Toro Co. v. White Consolidated Industries Inc.*, 199 F.3d 1295, 1301 (Fed. Cir. 1999). Since the definition for “among” offered in the rejection of the claims and repeated in the Advisory Action would not fit when considered in conjunction with the remainder of the claimed elements, in particular the claimed “allocate,” and since the only rational definition that can be attributed to “among” when considered in the full context of the claims is the definition that is provided by the Applicant, which provided definition must be accepted by the Office, it is respectfully submitted it cannot be said that any reading of Caveney (whether considered alone or in combination with Shipman) meets the metes and bounds of the *properly interpreted* claims and the rejection of the claims must be withdrawn.

As concerns Shipman, it is respectfully submitted that Shipman also fails to disclose,

teach, or suggest the claimed “*using a critical stocking ratio* for each of the plurality of items *to allocate* the total quantity of each of the plurality of items which can be held in inventory over the forecast period *among the plurality of distribution points in the supply chain...*” Rather, Shipman discloses managing inventory at distribution points outside of a manufacturing facility to allow administrators to better plan for inventory needs by *using customer order lead times* to optimize safety stock levels and the restocking trigger points at the distribution facilities. (see Col. 2, lines 56-62). Thus, while it is evident that the combination of Caveney and Shipman fails to disclose all of the claimed elements as is required to maintain a rejection under 35 U.S.C. § 103, it is further submitted that, were one to modify the system of Caveney according to the express teachings of Shipman to thereby achieve the goal of allowing administrators to better plan for inventory needs as espoused in the rejection of the claims, one would arrive at a system in which the *lead times* needed to meet the orders expected to be generated by the system of Caveney would be used to optimize safety stock levels and restocking trigger points at the distribution facilities that feed the customer facility in which the Caveney system resides. Since this is not that which is claimed, it is respectfully submitted that the combination of Caveney and Shipman fails to present a *prima facie* case of obviousness and the rejection must be withdrawn.

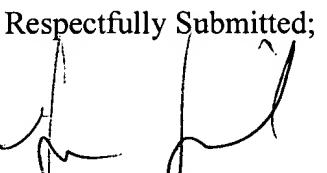
From the foregoing it will be appreciated that neither Caveney nor Shipman disclose, teach, or suggest the claimed “*using a critical stocking ratio* for an item *to allocate* a total quantity of the item which can be held in inventory over a forecast period among a plurality of distribution points *in the supply chain...*” Absent the disclosure of these claimed elements in either Caveney or Shipman, it cannot be said that one with no knowledge of the claimed invention would have selected various parts from the cited references and combined them in the claimed manner. Rather, as has been demonstrated, were one to follow the suggestion, teaching,

or motivation expressly set forth in the prior art, namely Shipman, one would have been led to modify Caveney to arrive at a system that simply fails to meet *all* of the elements set forth in the claims. Thus, it is respectfully submitted that the disclosure within Caveney and Shipman fails to present a *prima facie* case of obviousness and the rejection of the claims must be withdrawn.

Conclusion

It is respectfully submitted that the application is in good and proper form for allowance. Such action of the part of the reviewing panel is respectfully requested.

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Respectfully Submitted;

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